

Addictive Power of Cigarettes

- Dabble with Alcohol
 - Chances are 1:10 become an alcoholic
- Dabble with Cocaine
 - Chances are 1:6 of becoming a cocaine addict
- Dabble with nicotine
 - Chances are 1:2 of becoming addicted
 - Chances are 9:10 of becoming addicted

Addiction

- Everyone – Adults and Children
 - 100 Cigarettes (5 packs) addiction is well established
- Adolescents
 - 50% Addiction with 6 cigarettes
 - 1 per week for six weeks
- Some researchers think very susceptible kids may be hooked on 1 cigarette.

- 90% of kids start at age 18 and younger
- 50% of kids start at age 13 and younger
- NOT an adult choice, but a pediatric addiction that adults must live with

Nicotine

- The cigarette should be conceived not as a product but as a package. The product is nicotine. Think of the cigarette pack as a storage container for a day's supply of nicotine... Think of the cigarette as the dispenser for a dose unit of nicotine.... Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke" Phillip Morris, 1923

- In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry”
- RJR 1972

- Clear strategy for the Tobacco industry
 - Get kids to try it
 - Make the first experience as “sweet” as possible
 - Nicotine makes cigarettes “harsh” so blunt the nicotine “harshness” and increase the nicotine delivery

Additives

- Menthol – anesthetic blunts the nerves and makes mount number
- Sugar the sugar makes the mouth feel sweet and less harsh, but also dramatically increases nicotine delivery
- Cocoa and chocolate adds flavor BUT also adds theophylline which dilates bronchiotubes and increase nicotine delivery deep into the lung

Additives

- Licorice adds flavoring but also contains glycyrrhizin which is also a bronchodilator
- Numerous flavors to enhance sweetness and mask tobacco harshness.

Apple
Berry
Pineappl
e
Chocolat
e

- You will here that these products are for their “adult” customers
- Ask yourself, how many times have you seen any adult pull out a pack of chocolate, mint, apple or berry cigarettes.
- That Claim doesn’t even begin to pass the “smell” test, much less the taste test

Cost of This Proposal

- There is only the cost to the “adult” who might rarely buy a flavored cigarette
 - They can’t find their flavor any more.

- However, this law will expose our children to the "harsh" taste of REAL tobacco.
- This will avoid their exposure to the harsh reality of a life time of addiction and disease.

Robert M. Shyne MD

Policies to Reduce Youth Access to Tobacco

Based on a paper by Joseph R. DiFranza, M.D., Associate Professor of Family and Community Medicine, University of Massachusetts Medical School and Nancy A. Rigotti, M.D., Director, Tobacco Research and Treatment Center Massachusetts General Hospital Harvard Medical School for the Advocacy Institute's Health Science Analysis Project.

Executive Summary

In order to start smoking, young people must have access to tobacco products. There is abundant evidence that children can easily buy tobacco from stores and vending machines despite laws in all 50 states that ban the sale of tobacco to minors, because tobacco retailers do not comply with these laws and the laws have not been enforced until recently. The majority of cigarettes consumed by young people come from illegal sales to underage youths. Active enforcement of tobacco sales laws has the potential to curtail young people's access to tobacco products and thereby reduce the number of youths who take up smoking. Policies with this goal are widely advocated, have strong public support, and are a focus of federal, state, and local tobacco control efforts. There have been two actions at the federal government level. In 1992, Congress passed legislation (the so-called Synar amendment) requiring states to take action to reduce the sale of tobacco to minors in order to be eligible for substance abuse block grant funding. In 1996, the Food and Drug Administration issued regulations that established age 18 as the nationwide minimum age of sale for tobacco products.

The available evidence suggests that enforcement programs, which achieve a high level of merchant compliance with tobacco sales laws, may reduce youth access to tobacco and youth tobacco use. However, this requires strict law enforcement. If even 20 percent or less of merchants are breaking the law, youths will have little problem buying tobacco and enforcement will have no effect on tobacco use. Carefully enforced restrictions on youth access are an important component of any comprehensive strategy to reduce tobacco use among youths. However, youth access to tobacco is only one part of the complex problem of youth smoking. Efforts to reduce the supply of tobacco to youths are, by themselves, unlikely to be as effective as the same efforts combined with policies that reduce the demand for tobacco through increased prices and comprehensive restrictions on advertising and promotion. A youth access policy by itself might not have as large an impact on youth smoking and is not an acceptable substitute for a more comprehensive approach to reducing youth smoking.

Despite state laws, tobacco retailers continue to make over \$1.5 billion in illegal sales to minors each year. A carefully designed enforcement program will be necessary to withstand the strenuous efforts of tobacco retailers and the tobacco industry, both of which have opposed past efforts. Essential features of an effective enforcement program include:

1. licensing of vendors;
2. civil disposition of violations;
3. effective penalties;
4. frequent conduct of realistic inspections to test compliance with the law;
5. a mandated compliance rate of over 95 percent;
6. multiple layers of enforcement authority;
7. adequate and guaranteed funding; and
8. restrictions on self-service of tobacco.

Introduction

Preventing young people from starting to smoke is a major public health priority.[i] These efforts must focus on children, because 88 percent of smokers start by the age of 18.[ii] In the past, most public health efforts to reduce smoking among young people focused on reducing their demand for tobacco products. These efforts, which included school health education programs and mass media programs discouraging tobacco use, have had at best modest success and have been overwhelmed by environmental forces, such as tobacco advertising that appeals to children.[iii] As a result, adolescent smoking rates have risen, increasing by 32 percent between 1991 and 1997.[iv] Over the past decade, the public health community has developed a new approach to preventing youth smoking: reducing the *supply* of tobacco to youth.[v] Policies with this goal are widely advocated, have strong public support,[vi] and are a focus of federal, state, and local tobacco control efforts.[vii] This paper identifies the elements needed to implement restrictions on youth access to tobacco.

Sources Of Tobacco For Youths

In order to interrupt the supply of tobacco to young people, it is important to understand how children obtain tobacco. In surveys, almost all children say that they get their first cigarette from a friend or sibling. After the first cigarette, friends are the major source of tobacco.[viii] As nicotine dependence develops, there is a need to find a more reliable source of tobacco. At this point, the young smoker typically begins to purchase his or her own tobacco and in turn provides it to friends. When a youngster finds a merchant who will make an illegal sale, he or she may tell their friends, who may then return regularly to the same store. Some youths learn that certain clerks within a store will sell while others will not. One 11-year-old smoker told the first author that he had memorized the work schedule of the clerk at the drug store who would sell him cigarettes. Thus, even if only a few merchants in a community are willing to break the law, youths living in that community may experience little difficulty obtaining tobacco.[ix] It is also important to understand that even though half of young smokers list friends as a frequent source of tobacco, most of these friends are buying their tobacco from retailers. Thus, the majority of cigarettes consumed by youths come from illegal sales to underage youths.

Another source of tobacco for young smokers is shoplifting tobacco from stores. Up to 50 percent of young smokers admit to shoplifting tobacco at least once, and this source may become more prominent in the future if the purchase of tobacco becomes more difficult for youths. Self-service displays make tobacco available to shoplifters and may also make it easier for minors to purchase tobacco because they require the youth to have less interaction with a store clerk. A youth need not speak to the clerk if he or she can take the tobacco from a display and put it on the counter. Only 10 percent of young smokers report that parents and older relatives are a regular source of tobacco, and these are typically the older teenagers who have been smoking for years.[x]

In summary, the great majority of young tobacco users rely on tobacco retailers as their source of tobacco, either directly by purchasing or stealing the product, or indirectly by having their friends buy it. Reducing the sale of tobacco to children and curtailing shoplifting of tobacco ought to decrease young people's access to tobacco and thereby decrease their tobacco use. Underage youths were estimated to consume over \$1.5 billion worth of tobacco in 1997.[xi] Since then, both the price of tobacco and the prevalence of smoking among youths have increased substantially. This potential revenue provides a strong incentive to merchants to sell tobacco to children, even at the risk of a fine. Regulatory efforts to eliminate self-service displays, which could reduce shoplifting and make tobacco less accessible to youth, have been strongly opposed by retailers,

who receive promotional allowances from tobacco manufacturers for putting self-service displays in their stores.

Effect Of State And Local Actions To Reduce Tobacco Sales To Youths

All 50 states and US territories prohibit tobacco sales to minors, but these laws have rarely been enforced.[xii] Despite the universal existence of state laws banning tobacco sales to minors, multiple studies over the past decade have demonstrated that merchant compliance with these laws is low and that children can easily purchase tobacco from stores and vending machines.[xiii]

Improving compliance with tobacco sales laws has the potential to reduce the availability of tobacco to young people and thereby discourage smoking. The first efforts to do this focused on educating tobacco vendors about tobacco sales laws. This approach produced only partial improvement in merchant compliance and the effect was not sustained over time.[xiv] Consequently, public health strategies shifted from educating merchants to actively enforcing the laws restricting tobacco sales to minors. Enforcement programs generally employ minors, who are supervised by public health authorities, to make periodic attempts to purchase tobacco from stores and vending machines. Merchants who violate the law are fined and for repeated offenses can face suspension of their license to sell tobacco. Enforcement programs conducted by public health departments in several communities have consistently reduced the proportion of merchants who sell tobacco illegally to minors.[xv]

Whether this translates into reducing young people's access to tobacco products or their tobacco use is less certain, in part because these programs are new and have received relatively little scientific study. So far, the results of these studies are mixed. Uncontrolled studies in several individual communities have found that enforcing tobacco sales laws reduces the prevalence of smoking among youths.[xvi] In Woodridge, Illinois, strict enforcement against merchants and penalties for underage users resulted in a 69 percent decline in the smoking rate among young teens.[xvii] Five years later, when the youths were 18 years old, smoking rates were reduced by 50 percent over rates in surrounding communities.[xviii] This occurred despite the fact that by the age of 16 or 17, Woodridge youths could drive to the next town to buy tobacco. The fact that this intervention was effective even as the youths grew older suggests that many youths who were willing to try tobacco at the age of 13 or 14 may have matured beyond this susceptibility by age 16 or 17. Experiences similar to that in Woodridge have been reported in Leominster, Massachusetts, where smoking rates among young teenagers fell by 42 percent, and in communities in Washington, Minnesota and California.[xix]

However, a controlled study in Massachusetts failed to demonstrate the effectiveness of enforcing tobacco sales laws.[xx] The study compared three Massachusetts communities that enforced a tobacco sales law with three communities that did not. It reported that enforcing the law for two years had no effect on teen smoking rates. Merchants' compliance with tobacco sales laws improved more in towns that enforced the law than in those that did not, but over two years adolescents living in towns with enforcement reported little drop in their ease of tobacco purchase and no decline in tobacco use. In short, enforcing a tobacco sales law for 2 years improved merchants' compliance but did not alter youths' access to tobacco or smoking behavior. An explanation for this discrepancy proposed by the authors is that reducing the accessibility of tobacco to youth requires a higher degree of merchant compliance with tobacco sales laws than was achieved in the study. Implementing an enforcement program proved to be more complex for communities than had been anticipated. Political, bureaucratic, legal, and logistical obstacles, including strong pressure from tobacco retailers, prevented health departments from conducting inspections as frequently as planned in the study design and from imposing penalties as aggressively as was intended by statute. As a result, 20 percent of the merchants in the communities were still selling tobacco to minors after two years of enforcement and this degree of compliance with the law was not enough to reduce the supply of tobacco to children.

In contrast to the Massachusetts study, another study, an experiment involving 14 small rural communities in Minnesota, found that communities that adopt and implement policies to restrict youth access to tobacco do affect young people's access to tobacco and tobacco use.[xxi] Seven towns in the study were randomly assigned to participate in a community organizing effort whose goal was to change local policy and merchant behavior in order to reduce youth access to tobacco. The other seven towns received no special attention. After 32 months, the organizing effort led all seven towns to pass comprehensive local ordinances to limit youth access to tobacco, and the level of merchant compliance rose to 95 percent. Students in grades 8-10 in those towns had a slower rise in the rate of tobacco use over time, compared to students in the towns where no youth access efforts were being made. They made fewer attempts to purchase tobacco illegally and felt that tobacco was less accessible to them. The fact that merchant compliance exceeded 90 percent may explain why this study found an effect on youth smoking while the Massachusetts study did not. This intervention in the Minnesota study was also a broader one, consisting of community organizing, while in Massachusetts the intervention was limited to law enforcement only. Finally, it is possible that youth access policies work differently in different settings; in Minnesota, the setting was small rural towns while in Massachusetts it was larger urban communities.

It has been suggested that there may be a threshold effect to enforcement efforts; that is, if more than 5-10 percent of merchants in a community continue to break the law, youths will still find it easy to buy tobacco. This is supported by the observation that merchant compliance rates exceeded 90 percent in the two towns where reductions in teen smoking are best documented.[xxii] If this is true, enforcement must be carried out with sufficient vigor to ensure that fewer than 5-10 percent of merchants are breaking the law in order to produce any public health benefit. This would also imply that states and communities that reduce the proportion of law breaking merchants to 20 percent have actually had little effect on the ability of youths to purchase tobacco, despite the apparent progress made. The threshold effect would also imply that banning cigarette vending machines alone would be expected to have little effect on youth access. Youths can easily switch to stores as their source of tobacco if vending machines are eliminated and stores continue to make illegal sales.

Taken together, the available evidence suggests, but does not definitely prove, that there is a relationship between reductions in illegal sales to minors and decreases in youth tobacco use. However, more research is needed. Previous studies do suggest that enforcement which achieves very high levels of merchant compliance with tobacco sales laws can reduce young people's access to tobacco and their tobacco use. The data does not support the conclusion that restricting youth access to tobacco is a policy that can, all by itself, solve the problem of teen smoking. This is not surprising, since access is only part of the complex problem of youth tobacco use. What is needed is a comprehensive multifaceted strategy that can decrease both the supply of cigarettes to children and their demand for them. While some tobacco control advocates question the efficacy of youth access restrictions at all,[xxiii] most agree that the evidence on youth access restrictions is sufficient to include this policy as a valuable part of a comprehensive strategy to reduce tobacco use.

Possession Laws

Many current laws do not prohibit minors' use or possession of tobacco products. Laws that prohibit tobacco possession by youths have been proposed and enacted in some states and communities. Proponents of these laws argue that the fact that the possession of tobacco is legal contradicts the health message given to youths about tobacco. Youths frequently question how tobacco can be so dangerous if it is legal for youths to use it. School officials have advocated penalties for youths to allow them to prevent crowds of young smokers from congregating outside of school property, creating a nuisance, and setting a bad example for younger students. Police have advocated possession laws because of the high incidence of tobacco use among delinquent youths. To combat crime by delinquent youths, police stop youths for possession of tobacco, and

then search them for other drugs, alcohol and weapons. The tobacco industry also supports possession laws. Tobacco control advocates assert that this support is based on self-interest; i.e., that laws making it illegal for youths to possess tobacco also make it more difficult for authorities to conduct compliance tests for law enforcement or research. Special immunity must be obtained from the prosecuting attorney and in some cases this has been denied. The tobacco industry has introduced legislation that relieves store owners of responsibility for illegal sales while placing the punishment on the underage smokers. (HR 2034, S.1530) The shifting of blame from the retailers and manufacturers to the children has been a common theme of industry-sponsored legislation.[xxiv] Indeed, many bills provide for more severe penalties for the youngsters than for the corporations.[xxv] No study has evaluated whether the passage or enforcement of tobacco possession laws has a positive effect on youth's attitudes or behavior regarding tobacco. In the absence of any scientific evidence that making the possession of tobacco illegal is beneficial, it would be premature to adopt this approach as federal, state or local law.

Obstacles To Enforcement Of Tobacco Sales Laws

In practice, effective enforcement of tobacco sales laws has been very difficult to implement due to a lack of secure funding and intense opposition from the tobacco industry and retailer trade associations. Although state governments were estimated to collect \$245 million in state excise taxes in 1997 from the illegal sale of tobacco to minors,[xxvi] using some of that revenue to fund the enforcement of tobacco sales laws is not entertained. Furthermore, despite rhetoric to the contrary, a case can be made that tobacco manufacturers and retailers have made it a priority to obstruct the enforcement of these laws.[xxvii] Doing so is clearly in their financial self-interest for several reasons. Retailers have been illegally selling over \$1 billion of tobacco to minors each year, and a sizable minority of retailers does not want to relinquish this income.[xxviii] Retailers also receive large revenues from promotional allowances for putting tobacco in self-service displays. In the long term, widespread enforcement of youth access laws could translate into a sizable reduction in the number of adult smokers and therefore in tobacco industry revenues.

The tobacco industry has led an often-successful campaign to undermine efforts to enforce restrictions on the sale of tobacco to minors. Pro-tobacco forces have successfully advocated legislation in many states that hampers enforcement efforts.[xxix] Several provisions are common to many of these bills. They frequently strip all local law enforcement officials of their authority to enforce the law. Sometimes, only a single person in the state is authorized to enforce the law. Preemption strips communities of the authority to address the problem through local laws. Loopholes are included to make prosecutions all but impossible. For example, many laws now require that prosecutors prove that the merchant "knowingly and intentionally" sold tobacco to a minor. Many laws prohibit enforcement agencies from freely using standard enforcement techniques. As a result of these tobacco industry successes, enforcement officials in many states face an impossible task. In some states, enforcement is hampered by the lack of tobacco vendor licensing. In other states, licensing is done by the revenue department, which treats lists of vendors as privileged information that cannot be shared with law enforcement officials. In most states, the sale of tobacco to minors must be prosecuted as a criminal offense through the court system rather than being handled administratively as a civil offense.

Opposition to enforcement has also come from retailers. Retailers have mounted legal challenges to many laws that seek to address the problem of youth access. In many cases, the challenges have delayed enforcement in those communities. Additionally, the threat of legal challenges has been used successfully to intimidate communities from enacting these laws in the first place. Once laws have been enacted and enforced, retailers have mounted frivolous court challenges to their citations that tie up enforcement personnel and delay further enforcement activities. Merchant complaints and political pressure have resulted in many enforcement agencies conducting compliance tests using youths who are too young to be effective. A study has demonstrated that about half of merchants who are violating the law will make illegal sales only to youths who appear to be sixteen years of age or older.[xxx] These violators go undetected when

youths who appear younger than 16 are used to conduct compliance tests. The only way to protect older adolescents from illegal sales is to use older adolescents to conduct the compliance tests.

While most merchants respond to enforcement by training their personnel to obey the law, others appear to direct their energies into circumventing the law. Since youths used for compliance testing are often forbidden from lying about their ages, some merchants have learned to expose these youths by asking for their age instead of proof of age. Some merchants coax kids by saying "if you say you are 18, I can sell them to you." If the youth will not lie about his or her age, the merchant concludes that the youth is part of a law enforcement activity and will not sell to that youth. Merchants have developed phone networks to tip each other off when they suspect that compliance tests are underway. Some merchants have learned to avoid prosecution by not selling tobacco to unfamiliar children. Since law enforcement programs do not send underage buyers into stores where they are known, some merchants will say "If you are under 18, I can't sell them to you unless I know you".

When retailers have been prosecuted they have sometimes used their political clout to retaliate against enforcement agencies. Elected officials who are pro-retailer have threatened and cut the budgets for the enforcement agencies as punishment for enforcing the law. In some instances, this political intimidation has decimated enforcement programs.

Current Federal Policies To Reduce Tobacco Sales To Youths

The Federal government has taken two actions to address youth access to tobacco: the Synar amendment and the FDA regulations. First, in 1992, Congress adopted legislation to encourage states to reduce the availability of tobacco to minors.[xxxii] This so-called Synar Amendment makes the receipt of federal block grants for substance abuse and mental health programs contingent upon states adopting and enforcing restrictions on the sale of tobacco to minors in a manner which can be "reasonably expected" to reduce the availability of tobacco to youth.[xxxiii] Implementation of this law was delayed for over three years awaiting regulations issued by the Department of Health and Human Services.[xxxiii] These regulations only require states to achieve an 80 percent merchant compliance level.[xxxiv] Research cited above has demonstrated that compliance rates of 80 percent cannot be "reasonably expected" to reduce the availability of tobacco to youths. While the idea of encouraging states to enforce their laws is a good one, the DHHS regulations are likely to do little or nothing to reduce youth access to tobacco if states only meet the minimum compliance level.[xxxv] Furthermore, the Synar amendment has proved to be awkward to implement. The federal government does not provide states with funding for this purpose and specifically prohibits the use of block grant funds for enforcement. The state agencies that are at risk of losing their funding have no enforcement authority. The state agencies that do have enforcement authority have no incentive to enforce the law and no funding to do so.

The second federal government action is contained in the 1996 FDA regulations that address many aspects of youth access.³⁵ These include the following provisions: (1) cigarette vending machines are banned from locations where youths are allowed; (2) all tobacco products must be inaccessible to customers; (3) the free distribution of tobacco products is prohibited; (4) tobacco sales to customers under age 18 are prohibited; and (5) vendors must obtain photographic proof of age from any customer under 27 years of age. The FDA is currently enforcing only the last two (minimum age and ID) requirements while the other provisions are in litigation. The FDA is contracting with individual states to conduct compliance tests on their behalf for enforcement purposes. To enforce all of its tobacco regulations, the FDA has been budgeted \$39 million, a sum inadequate to enforce the law fully in all 50 states. Funding for FDA enforcement in future years is not guaranteed, which makes these activities politically vulnerable. While the current FDA staff is motivated to do an excellent job, a change in leadership could result in a complete

halt to enforcement activities because the FDA is under no statutory mandate to adequately enforce the youth access provisions of its regulations.

Recommendations for state regulations include the following:

- Establish a minimum age equal to or higher than that established under federal law.
- Adopt the FDA restrictions regarding vending machines, free sampling, self-service, minimum package size, out of pack sales and point of purchase advertising. These two provisions will allow state and local authorities to use state law to enforce the federal restrictions.
- Establish a state enforcement authority that would administer the license, directly receive federal funding, have primary responsibility to enforce the law and perform civil administrative disposition of violations.
- Ensure that government issued identifications such as driver's licenses carry some easily recognized indication that the person is under age. Some states do this with color, in others, the photo is in profile instead of face forward. These licenses greatly simplify the task of determining whether a person is old enough to buy tobacco. Some of the settlement dollars could be provided to states to facilitate any transition costs.
- All state and local law enforcement officials must be allowed to enforce the state law.
- Penalties for violations should primarily target store owners. Minimum penalties should be established as follows: First and all subsequent offenses against the clerk, \$250 fine. First offense against the license holder, \$500 fine. Second offense in a two-year period, \$1000 fine. Third offense in a two-year period, \$1000 fine and a three-business day suspension of the tobacco license. Fourth offense in a two-year period, \$1000 fine and a one-year loss of the tobacco license.
- Require state compliance rates to be above 90 percent within two years of the date of enactment.
- Require signs at each cash register stating the legal minimum age and providing a toll-free number to report illegal sales.
- Require government issued photographic proof of age for any customers under 27.
- Require that youths be prohibited from entering any tobacco-only stores, which are often exempt from smoking regulations and marketing restrictions.

Components Of Effective Enforcement

Given the many obstacles to enforcing tobacco sales laws, it may seem unrealistic to get 95 percent of merchants to obey the law. However, communities like Woodridge, Illinois, have found that with a serious enforcement effort, it is possible to approach 100 percent merchant compliance in a short period of time.⁶ A model for the effective and efficient enforcement of youth access laws based on the experience of cities in Massachusetts has been developed.^[xxxvi] According to this model, public health authorities license tobacco merchants, educate them about tobacco sales laws, and warn them that their compliance with the law will be tested. Then, compliance with the law is routinely tested by employing minors to attempt to purchase tobacco. The minors are closely supervised by adults during these activities. If an illegal sale is made, the vendor receives a citation. Penalties include fines and possible suspension of the license to sell tobacco for repeated violations.

For an initiative to be successful, tobacco industry opposition to enforcement efforts must be anticipated, and a system must be designed to guarantee that effective enforcement will occur. The essentials of a model enforcement system are described below. These criteria provide a structured format with which the legislative initiatives can be compared.

Licensing. Effective and efficient enforcement requires the licensing of tobacco vendors. Without a license, an enforcing agent does not know where tobacco is sold, who is responsible for

violations, and where to mail a citation. It is estimated that enforcement inspections consume double the resources when vendors are not licensed (DiFranza, personal communication). License fees are a fair and convenient way to fund enforcement activities since the cost of enforcement is borne by those who profit from the activity being regulated. Retailers sometimes oppose using license fees to fund enforcement out of fear that the licensing agency will continuously boost the fee out of financial self-interest, but there is no evidence that this has occurred.[xxxvii] State and federal enforcement have been significantly hampered by the fact that in many states it is difficult to obtain a list of tobacco vendors. This information is sometimes considered confidential tax information that cannot be disclosed to anyone. Indeed, the actual number of tobacco retailers is uncertain. The tobacco industry estimates 1,000,000. Two national industry groups estimate the number of tobacco vending machines at either 110,000 or 300,000.[xxxviii] Accurate figures are needed to plan enforcement inspections and estimate their cost.

An enforcement system will require the creation of a new licensing system. Several states do not currently license tobacco retailers and the retailers themselves in several states have fought very hard to oppose any form of licensing.[xxxix] There must be a plan to handle licensing in those states that either do not license tobacco vendors or refuse to share their lists of licensees.

Civil disposition. The enforcing agency must be capable of dealing with infractions through administrative civil action against the license holder. Criminal prosecution wastes governmental resources and ties up the courts. It also reduces the certainty of punishment for violators if, for example, overburdened courts dismiss charges in order to clear their dockets.

Penalties. The law must provide for meaningful penalties against the license holder. FDA enforcement should focus on the owner of the establishment because it is the owner who is responsible for all health and safety issues. In light of the large potential income a vendor can make from illegal tobacco sales, the penalties must be substantial and should include provisions for license suspension and revocation for repeat offenses. While there is no argument against also penalizing the clerk who makes the sale, license holders must be held accountable for the actions of their employees. The question is not "what is a fair penalty for selling tobacco to children?" but "what kind of penalty will it take to finally convince retailers to obey the law?" Minimum but not maximum penalties should be codified into law.

Compliance testing. The enforcing agency must be authorized to conduct realistic compliance tests without restrictions on how often these tests can occur or the manner in which they are conducted. The more often compliance tests are conducted, the greater the proportion of merchants who stop violating the law.[xl] In several communities, it has been discovered that every merchant must be tested four times each year in order to maintain acceptable compliance rates. Youths employed as decoys should be able to act as real youths do. First, a state ban on compliance tests may prevent the FDA from enforcing its regulations. Second, it will not be possible to determine if a state is submitting fraudulent compliance rate reports if only state authorities are permitted to conduct compliance tests. Third, if researchers cannot conduct compliance tests, it will be impossible to conduct further public health experiments to determine if enforcing the law will reduce youth tobacco use.

Funding. The enforcing agency must have permanent funding sufficient to the task. As the funding requirements are directly proportional to the number of vendors, an annual licensing fee collected from each retailer is the most logical source of permanent funding. If only funds from any proposed tobacco settlement are used to fund enforcement, the enforcement system will have only a temporary base.

Minimum permissible compliance rates. Many youth access laws are not enforced at all and research has shown that half-hearted enforcement efforts do not reduce tobacco use among

youths.[xli] The enforcing agency should have a mandate to enforce the law with sufficient vigor to maintain compliance above 95 percent.

Enforcement redundancy. The enforcement system must have built-in redundancy. The model state law should include a provision that all state and local law enforcement agencies are authorized to enforce the law. State legislation sponsored by the tobacco industry typically strips local law enforcement officials of their authority to enforce the law.[xlii]

Minimum age. It has been argued that 18 is not the ideal minimum age of tobacco purchase since it allows high school seniors to purchase tobacco. Minimum ages of 19, 20 or 21 would be more effective at keeping tobacco out of the high schools. Many retailers would like to see the same minimum age for alcohol and tobacco – age 21.

Self-service. The law should eliminate vending machines, free sampling and self-service of all tobacco products.

Impediments. There should be no other impediments to enforcing the law or prosecuting merchants.

Preemption. There should be no preemption of local authority to enact or enforce their own restrictions other than the preemption over anti-compliance testing provisions discussed above.

Notes

[i] U.S. Department of Health and Human Services. (1989). "Reducing the Health Consequences of Smoking: 25 Years of Progress - A Report of the Surgeon General". U.S. Department of Health and Human Services, US Public Health Service, Centers for Disease Control, Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. Washington, DC. DHHS Publication No. (CDC) 89-8411; Department of Health and Human Services, Public Health Service. (1991). "Healthy People 2000: National Health Promotion and Disease Prevention Objectives." DHHS Publication No. (PHS) 91-50213; U.S. Department of Health and Human Services. (1994). "Preventing Tobacco Use Among Young People: A Report of the Surgeon General." Atlanta, GA. U.S. Department of Health and Human Services.

[ii] U.S. Department of Health and Human Services, (1994).

[iii] Ibid.

[iv] Department of Health and Human Services. (1998). "Tobacco use among high school students -- United States, 1997." Morbidity and Mortality Weekly Report. 47:229-233; Johnston, LD, O'Malley, PM, Bachman, JG. (1996). "National Survey Results on Drug Use from the Monitoring the Future Study, 1975-1995." Rockville, MD. National Institute on Drug Abuse. NIH Publication No. 96-4139.

[v] Jason, LA, Ji, PY, Anes, MD, Birkhead, SH. (1991). "Active enforcement of cigarette control laws in the prevention of cigarette sales to minors." JAMA 266:3159-3161; DiFranza, JR, Carlson, RR, Caisse. RE. (1992). "Reducing youth access to tobacco". Tobacco Control. 1:58.

[vi] Hilts, PJ. (January 31, 1995). "Americans want government to keep children from smoking." New York Times.

[vii] Jason, LA, Ji, PY, Anes, MD, Birkhead, SH. (1991). "Active enforcement of cigarette control laws in the prevention of cigarette sales to minors." JAMA 266:3159-3161; DiFranza, JR, Carlson,

RR, Caisse. RE. (1992). "Reducing youth access to tobacco". Tobacco Control. 1:58; Centers for Disease Control and Prevention. (1996) "State Tobacco Control Highlights - 1996." Atlanta, GA. U.S. Department of Health and Human Services. CDC Publication No. 099-4895.

[viii] DiFranza, JR, Eddy, JJ, Brown, LF, Ryan, JL, Bogojavlensky, A. (1994). "Tobacco acquisition and cigarette brand selection among youth." Tobacco Control. 4:334-338; Forster, JL, Klepp, KI, Jeffery, RW. (1989). "Sources of cigarettes for tenth graders in two Minnesota cities." Health Education Research. 4:45-50;

Cummings, KM, Sciandra, E, Pechacek, TF, Orlandi, M, Lynn, WR, for the COMMIT Research Group. (1992). "Where teenagers get their cigarettes: a survey of the purchasing habits of 13-16 year olds in 12 US communities." Tobacco Control. 1:264-267; Wolfson, M, Forster, JL, Claxton, AJ, Murray, DM. (1997). "Adolescent smokers provision of tobacco to other adolescents." American Journal of Public Health. 87:649-651.

[ix] Rigotti, NA, DiFranza, JR, Chang, YC, Tisdale, T, Kemp, B, Singer, DE. (1997). "The effect of enforcing tobacco sales laws on youth's access to tobacco and smoking behavior: A controlled trial." New England Journal of Medicine. 337:1044-51.

[x] DiFranza et al. (1994).

[xi] DiFranza, JR, Librett, JJ. (1999). "State and Federal Revenues from tobacco consumed by minors." American Journal of Public Health. 89:1106-1108.

[xii] Office of Inspector General. (April 1995). "State oversight of tobacco sales to minors." Department of Health and Human Services. OEI-02-94-00270; Centers for Disease Control. (1996).

[xiii] U.S. Department of Health and Human Services, (1994); Department of Health and Human Services. (1996). "Accessibility of tobacco products to youths aged 12-17 years- United States, 1989 and 1993." Morbidity and Mortality Weekly Report. 45:125-130;

Radecki, TE, Zdunich, CD. (1993). "Tobacco sales to minors in 97 US and Canadian communities." Tobacco Control. 2:300-305; Erickson, AD, Woodruff, SI, Wildey, MB, Kenney, E. (1993). "A baseline assessment of cigarette sales to minors in San Diego, California." Journal of Community Health. 18:213-224; U.S. Department of Health and Human Services. (1992). "Minors' access to tobacco -- Missouri, 1992, and Texas, 1993." Morbidity and Mortality Weekly Report. 42:125-128; Department of Health and Human Services. (1994). "Minors' access to smokeless tobacco -- Florida, 1994." Morbidity and Mortality Weekly Report. 44:839-841; Department of Health and Human Services. (1996). "Accessibility to minors of cigarettes from vending machines -- Broward County, Florida, 1996." Morbidity and Mortality Weekly Report. 45:1036-1038.

[xiv] DiFranza, JR, Savageau, JA, Aisquith, BF. (1996). "Youth access to tobacco: the effects of age, gender, vending machine locks, and "It's the Law" programs." American Journal of Public Health. 86:221-224; Altman, DG, Foster, V, Rasenick-Douss, L, Tye, JB. (1985). "Reducing the illegal sales of cigarettes to minors." JAMA 261:80-83; Altman, DG, Rasenick-Douss, L, Foster, V, Tye, JB. (1991). "Sustained effects of an educational program to reduce sales of cigarettes to minors." American Journal of Public Health. 81:891-893.

[xv] Feighery, E., Altman, DG, Shaffer, G. (1991). "The effects of combining education and enforcement to reduce tobacco sales to minors: A study of four northern California communities." JAMA 266:3168-3171; Jason, LA et al. (1991); DiFranza et al. (1992); Centers for Disease Control and Prevention. (1996).

[xvi] Hinds, MW. (1992). "Impact of a local ordinance banning tobacco sales to minors." Public Health Reports. 107:355-358; ; Jason, LA et al. (1991). ; DiFranza et al. (1992).

[xvii] Jason, LA et al. (1991).

[xviii] Jason, LA, Billows, WD, Schnopp-Wyatt, DL, King, C. (1996). "Long-Term findings from Woodridge in reducing illegal cigarette sales to older minors." Evaluation and the Health Professions. 19:3-13.

[xix] Hinds. (1992); DiFranza et al. (1992).

[xx] Rigotti et al. (1997).

[xxi] Forster, J, Wolfson, M, Murray, DM, Blaine, TM, Wagenaar, AC, Hennrikus, BJ. (1998). "The effects of community policies to reduce youth access to tobacco." American Journal of Public Health. 88:1193-1198.

[xxii] Jason, LA et al. (1991); DiFranza et al. (1992).

[xxiii] Glantz, SA. (1996). "Editorial: Preventing tobacco use -- the youth access trap." American Journal of Public Health. 86:156-158.

[xxiv] DiFranza, JR, Godshall, WT. (1996). "Tobacco industry efforts hindering enforcement of the ban on tobacco sales to minors. Actions speak louder than words." Tobacco Control. 5:127-131.

[xxv] DiFranza, JR, Savageau, JA, Aisquith, BF. (1996). "Youth access to tobacco: The effects of age, gender, vending machine locks and the "It's the Law" programs." American Journal of Public Health. 86:221-224.

[xxvi] DiFranza, JR and Librett, JJ. (1999).

[xxvii] DiFranza, JR, Godshall, WT. (1996).

[xxviii] DiFranza, JR, Librett, JJ. (1999).

[xxix] DiFranza, JR, Godshall, WT. (1996).

[xxx] DiFranza, JR, Savageau, JA, Aisquith, BF. (1996). "Youth access to tobacco: The effects of age, gender, vending machine locks and the "It's the Law" programs." American Journal of Public Health. 86:221-224.

[xxxi] Section 1926 Public Health Service Act 42 U.S.C. 300x-26.

[xxxii] Ibid.

[xxxiii] Federal Register. (August 26, 1993). "Substance abuse prevention and treatment block grants: Sale or distribution of tobacco products to individuals under 18 years of age; proposed rule." 45156-45174; Department of Health and Human Services. (January 19, 1996). "45 CFR Part 96 Tobacco regulation for substance abuse prevention and treatment block grants; final rule." Federal Register. 1492-1509.

[xxxiv] Ibid.

[xxxv] Rigotti, NA et al. (1997).

[xxxvii] DiFranza JR, Celebucki C, Seo HG. A model for the efficient and effective enforcement of tobacco sales laws. American Journal of Public Health 1998 (in press).

[xxxviii] Rudman WB. (March 31, 1997). Report to the management of Philip Morris U.S.A. regarding the implementation of the action against access program.

[xxxviii] National Automatic Merchandising Association. (1995). Cigarette Vending Fact Sheet. Chicago, Illinois;

Vending Times. (February 1998). Personal Communication. New York, NY.

[xxxix] Rudman WB. (March 31, 1997).

[xl] Jaorkson LA, Billows WD, Schnopp-Wyatt DL, King C. (1996). Reducing the illegal sales of cigarettes to minors: Analysis of alternative enforcement schedules. J Applied Behavioral Analysis. 29:333-344.

[xli] Rigotti, NA, et al. (1997)

[xlii] DiFranza, JR, Godshall, WT. (1996)

Testimony in support of HB 654 to the Business and Labor Committee

February 16, 2007

Todd Harwell, MPH

Chief, Chronic Disease Prevention and Health Promotion Bureau, Public Health and Safety Division,
Department of Public Health and Human Services

Good morning Mr. Chairman, committee members, my name is Todd Harwell and I am the Chief of the Chronic Disease Prevention and Health Promotion Bureau, which is located within the Public Health and Safety Division of the Montana Department of Public Health and Human Services. On behalf of the Department I am testifying in support of HB 654. HB 654 is comprehensive legislation that would significantly reduce the number of kids and young adults in Montana who start smoking and using spit tobacco. If I may, I would like to pass out a copy of my testimony and a reference articles that provide additional information regarding the issues addressed in the bill.

As you know, tobacco use including exposure to secondhand smoke is the leading cause of preventable death in Montana. Tobacco use costs Montana millions of dollars annually to address the illness and death that this addiction causes. The vast majority of Montanans initiated smoking and the use of spit tobacco during adolescence. In 2005, 19% of Montana youth in eighth, tenth, and twelfth graders had smoked cigarettes in the past month, and 15% of Montana boys had used spit tobacco in the past month. On a positive note – we have seen a significant decline in youth smoking in Montana from 38% in 1999 to 20% in 2005, and now down to 17% in 2006. On the other hand the prevalence of spit tobacco use has remained high and stable over the past few years.

HB 654 addresses a number of important issues to prevent initiation of smoking and spit tobacco use among youth. These include prohibiting the distribution of free or discounted tobacco products, prohibiting the sale of flavored tobacco products, and ensuring that tobacco products are kept out of reach of youth.

Why should we prohibit the distribution of free and discounted tobacco products in Montana?

The tobacco industry used promotional offers on tobacco products, such as dollar off and multi-pack discounts to subsidize the price of tobacco products for price-sensitive subgroups of the population may cut their consumption or even quit. In 2002, the industry spent 72% of their marketing expenditures, approximately \$9 billion dollars, on promotional offers. The population segments that the industry

targets include low-income smokers, and young adults. A recent study shows that young adults aged 18 to 24 years old were the most likely to use these promotional offers.¹

Why should we prohibit the sale of flavored tobacco products in Montana? The tobacco industry has used numerous strategies targeting youth to capture replacement smokers and spit tobacco users. For years the industry marketed their product to adolescents and young adults through advertisements in youth magazines, billboards near schools, programs targeting specific events such as county fairs, as well as baseball and rodeo. This marketing included youth oriented advertising using cartoon figures such as the smooth "Joe Camel," as well as promoting flavored products that are perceived as more desirable to new tobacco users.

In 1998 the Master Settlement Agreement, an agreement between the tobacco industry and multiple State Attorneys General went into effect. This agreement prohibited the industry from directly or indirectly marketing their deadly products to youth. Since the Master Settlement Agreement became effective, the ever resourceful tobacco industry has developed new strategies to target Montana adolescents and young adults. R.J. Reynolds began producing candy, fruit, and alcohol flavored Camel, Cool, and Salem cigarettes.^{2,3} This strategy is similar to previous strategies the industry has used but with a new devious twist. First, by incorporating flavoring, the product is more desirable to new inexperienced users, and once they initiate use and become addicted it is likely they will proceed on to the use of unflavored products. The second strategy was to package and market the product using cool "youth-focused" images.

In 2006, 38 State Attorneys General reached a settlement with R.J. Reynolds to withdraw these products from the market due to the obvious violation of the Master Settlement Agreement of promoting tobacco products to youth. This settlement was a major victory to protect the health of Montana youth. However, additional brands of flavored tobacco products are still being marketed and sold to Montana youth. HB 654 will ensure that these deadly products will not continue to be promoted and sold to youth in this State.

Why should tobacco products be behind the counter? Unfortunately in Montana we still have super markets, convenience stores, and gas stations that still have self-service tobacco displays. A customer in the store, including kids, can directly access tobacco products. And as kids do, particularly kids addicted to tobacco, they steal. Previous studies have shown that stores that remove direct customer access to

tobacco products experience less shoplifting of these products.^{4,5} An similar approach has been used in Montana to reduce theft of over-the-counter pharmacy products to produce methamphetamine.

Opponents to this bill, likely limited to tobacco industry representatives and retailers, will argue that giveaways and discounted offers, flavored tobacco products they produce and sell, such as individual cigarettes in lip gloss containers, and multiple types of flavored spit tobacco, are not targeted to kids, but rather to young adults aged 18 to 24. When you hear testimony like this be cautious. The tobacco industry has purposefully hidden evidence and confused facts for many decades. It has taken legal proceedings to force the industry to admit that the direct use of their products and exposure to secondhand smoke causes premature death. I am hopeful that we will not have to wait more decades for the industry to acknowledge that they using these strategies to target our kids. However, I am not going to hold my breath while the industry continues to take the breath away from Montanans who smoke.

I would like to thank Representative McAlpin for sponsoring this important legislation, and I strongly urge that you pass this measure. Thank you.

Reference:

1. Connolly, GN. The marketing of nicotine addiction by one oral snuff manufacturer. *Tob Control* 1995;4:73-79.
2. Lewis MJ, Wackowski O. Dealing with an innovative industry: a look at flavored cigarettes promoted by mainstream brands. *Am J Public Health* 2006;96(2):244-51.
3. Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: tobacco marketing strategies. *Health Affairs* 2005;24(6):1601-1610.
4. Lee RE, Feighery EC, Schleicher NC, Halvorson S. The relationship between community bans of self-service tobacco displays and store environment and between tobacco accessibility and merchant incentives. *Am J Public Health* 2001;91(12):2019-21.
5. Caldwell MC, Wysesell MC, Kawachi I. Self-service tobacco displays and consumer theft. *Tob Control* 1996;5:160-161.